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REPORT
101-546

PROVIDING FOR FEDERAL RECOGNITION OF THE MOWA BAND OF CHOCTAW INDIANS OF ALABAMA

OCTOBER 19 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 381]

The Committee on Indian Affairs, to which was referred the bill (S. 381) to provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 381 is to provide for Federal recognition of the Mowa Band of Choctaw Indians of Alabama.

BACKGROUND

The Mowa Band of Choctaw live in Alabama wihin the original boundaries of the Choctaw Nation. The Band has 3,000 to 4,000 members. The name Mowa was derived from the first two letters of Mobile and Washington counties where they live and recently used to identify the group. The community as presently constituted was established in 1800.

The Mowas represent the descendants of a handful of individual Choctaw families, along with at least one Cherokee and one Creek family, who avoided being removed West to Oklahoma in the 1830s. The Treaty of Dancing Rabbit Creek expressly provides for non-removal of Indian families, apparently for the purpose of assimilating them into the state citizenry. Nevertheless, the treaty also provides for retention of tribal citizenry despite the fact that the tribal government was clearly being moved to the West.

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Artifacts and other paraphernalia indicate that the area of Mobile and Washington counties flourished as an Indian center long before the arrival of Europeans, with trading and other social interaction prevalent among the various southeastern tribes. Subsequently, Mobile became a major point of deportation for removal of the Cherokee, Creek, Choctaw, and Chickasaw Tribes.

The Mowa Band of Choctaw filed a documented petition with the B.I.A. and in February 1990 received a letter of "Obvious Deficiency" (a technical step in the acknowledgment process). The Bureau offered for testimony their correspondence with the Mowa regarding the Mowa petition.

The Choctaw removal treaty and subsequent government correspondence expressly recognize the right of individual members to remain behind without giving up their status as Choctaw citizens; however, the government's stated purpose of allowing some Choctaw to remain was so that they could become American citizens. Today's Mowas have well-established their lineal descendence to those who signed various treaties and who remained behind. B.I.A. testimony stipulates to this proof of lineal descendance and, in fact, suggests that the Mowa petition is overloaded with genealogical proof and not enough tribal-oriented documentation.

Although remaining behind as American and Choctaw citizens, the Mowas essentially lost governing powers because the recognized governing body of the Choctaw was removed westward. However, the Choctaw who remained behind did not necessarily become dispersed into the general American citizenry. After removal and the Civil War these Indians were identified as the "Indians of South Alabama" and were designated as "non-white" for educational purposes (not allowed into local public schools). These remaining Choctaw, "over 400 living in the neighborhood" also raised group complaints of being defrauded of scrip rights. The 1890 census also identified over 400 Choctaw living in Mobile County.

Thus, the B.I.A. seems to agree that the Mowa have sustained communities in the geographical sense. In regards to "community" in the anthropological sense, whether the group has maintained internal social interaction and external interaction, as a group, the B.I.A. believes that the group has not yet made its case.

The B.I.A. believes that the Mowa petition has obvious deficiencies in providing proof of tribal governance historically and presently and of identification of the group as Indian by outside entities. In testimony before the Committee the Mowa conceded this point, noting that the problem is exacerbated by the fact that the Alabama capital was burned to the ground and, in 1907, the Washington County Courthouse and all documents were burned.

The Mowa Band incorporated in 1979 and have had a documentable governing body since that time.

LEGISLATIVE HISTORY

S. 381 was introduced by Senator Shelby, for himself and Senator Heflin, on February 8, 1989. The bill was referred to the Select Committee on Indian Affairs for consideration. A hearing was held on S. 381 on March 28, 1990. In an open business session on Sep-

tember 26, 1990, the bill was considered by the Committee and ordered reported with an amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On September 26, 1990, the Select Committee on Indian Affairs, in an open business session, considered S. 381 and the bill was ordered reported with an amendment with a recommendation that the bill, as amended, be passed by the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the Act may be cited as the "Mowa Band of Choctaw Indians Recognition Act".

Section 2 provides that Federal recognition is extended to the Mowa Band of Choctaw Indians of Alabama and that all Federal laws of general application that apply to Indians and Indian Tribes shall apply to the Mowa Band of Choctaw Indians.

Section 3 provides that all rights and privileges of the Mowa Band of Choctaw Indians that may have been abrogated or diminished before the date of enactment of this Act as a result of Federal law that terminated Federal recognition of the Band are restored and shall no longer apply with respect to the Band or its members. Section 3 further provides that nothing in the Act diminishes any rights or privileges of the Mowa Band of Choctaw Indians or its members that existed prior to enactment of this Act, nor does this Act extinguish or diminish any claim the Band may have. Section 3 also provides that nothing in this Act alters or affects any property rights or obligations, any rights or obligations under any contract, or any obligation to pay a tax levied before the date of enactment of this Act.

Section 4 provides that all legal rights, title and interests in lands held by the Mowa Band of Choctaw Indians on the date of enactment of this Act are transferred to the United States in trust for the use and benefit of the Mowa Band of Choctaw Indians. Interest in any lands acquired by the Mowa Band of Choctaw Indians after date of enactment of this Act shall, notwithstanding any other provision of law, be transferred to the Secretary of the Interior on behalf of the United States to be held in trust for the benefit of the Mowa Band of Choctaw Indians. Section 4 authorizes the Attorney General of the United States to approve any deed or other instrument used to make a conveyance of any lands transferred to the United States after the date of enactment of the Act. Section 4 provides that any lands transferred to the United States under this section and held in trust for the benefit of the Band shall constitute the reservation of the Mowa Band of Choctaw Indians. Section 4 contains the findings of the Congress that the provisions of this section are enacted at the request of the Mowa Band of Choctaw Indians and are in their best interests.

Section 5 provides that the Mowa Band of Choctaw Indians and its members shall be eligible for all services and benefits provided by the Federal Government to Indians because of their status as Federally recognized Indians, and such services and benefits shall be provided after the date of enactment of this Act to the Band and its members without regard to the existence of a reservation for

the Band or the location of the residence of any member of the Band on or near any Indian reservation.

Section 6 provides that the Mowa Band of Choctaw Indians may organize and adopt a constitution and bylaws in accordance with regulations prescribed by the Secretary of the Interior. Section 6 directs the Secretary of the Interior to offer assistance to the Band in drafting a constitution and bylaws. Any constitution, bylaws or amendments shall take effect only after they are filed with the Secretary of the Interior.

Section 7 provides that until a constitution for the Mowa Band of Choctaw Indians is adopted, the membership of the Band shall consist of every individual who is named in the tribal membership roll that is in effect on the date of enactment of this Act, or who is a descendant of such individual. Following the adoption of a constitution by the Mowa Band of Choctaw Indians membership shall be determined in accordance with the terms of such constitution or any bylaws adopted under such constitution.

Section 8 provides that the Secretary of the Interior shall prescribe such regulations as may be necessary to carry out the purposes of this Act.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 4, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs
Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 381, the Mowa Band of Choctaw Indians Recognition Act, as ordered reported by the Senate Select Committee on Indian Affairs on September 25, 1990.

S. 381 would grant Federal recognition to the Mowa Band of Choctaw, making all members of the tribe eligible for Federal benefits and services. No funds are specifically authorized for this purpose; however, relevant Federal agencies would be required to include members of the tribe among those eligible for benefits and may seek additional funds in order to provide such benefits. CBO estimates that the average annual cost of services and benefits provided nationally is about $3,000 per eligible Indian. If this average is applicable to the Choctaw Tribe, the annual cost would be about $10 million.

Other provisions of the bill would allow the tribe to transfer land to be held in trust by the Secretary of the Interior and would establish rules for determining membership in the tribe and adopting a tribal constitution and bylaws. CBO estimates that these provisions would result in no cost to the Federal Government or to state and local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 381 will have some impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee received the following letter from the Department of the Interior:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, April 30, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to provide you with our views on S. 381, the "Mowa Band of Choctaw Indians Recognition Act."

We strongly oppose the enactment of S. 381.

S. 381 would provide Federal recognition to the Mowa Band of Choctaw Indians of Alabama (Mowa) without application of the Federal acknowledgment process as prescribed in the Code of Federal Regulations (25 CFR 83). Our acknowledgment criteria are fair and the acknowledgment process established in 1978 provides each petitioning group the opportunity for an unbiased, detailed evaluation of their documented petition for acknowledgment. However, S. 381 would circumvent the standard recognition process that all similarly situated groups are required to complete. This would be unfair to the other groups seeking recognition and further weaken the administrative process, which was established with the support of the Congress.

Enactment of the bill would establish a perpetual government-to-government relationship between the Mowa Band and the United States. Recognition through legislation would bypass the established administrative process, which was established, with the support of Congress, to insure that petitions would be considered on a uniform and consistent basis and that only groups that can meet the seven mandatory criteria would be acknowledged. It has been our policy to oppose legislation which would provide Federal recognition through the Congress.

The administrative process provides for a detailed, thorough examination of petitions to determine whether they meet the criteria for Federal acknowledgment set forth in 25 CFR 83. As part of this process, and prior to placing it under active consideration, we are required to give the petition a cursory review for obvious deficiencies and significant omissions. This is called an "OD Review." The purpose of the review is to insure that the petitioner is not rejected because of technical problems in the petition and that the group's status will be considered on its own merits. The OD review provides the petitioner with an opportunity to submit additional information or clarification prior to the actual active consideration period.

Our recent OD review of the Mowa petition indicates that significant deficiencies do exist. In a February 15, 1990, letter to the Mowa Band (copy attached) we described these deficiencies. Among the significant deficiencies noted in our letter is the fact that the historical narrative portion of the petition focuses primarily on the genealogical connections of individual families and largely ignores the social and political history of the communities where the Mowa lived. No social or political history is provided for two of the Mowa communities with founding dates in the 1830's. The petition provides little specific information on the historic and current Mowa governing system, raising questions as to how the group has maintained tribal political authority from the past to the present and how its leaders in the past influenced Mowa members. With respect to the documentation, numerous statements and conclusions were left undocumented (i.e., not footnoted as to source) and copies of significant unpublished dissertations (and relevant newspaper articles) were not provided. Their claim of Indian descent will need intensive evaluation once the petition goes on active consideration because the documentation submitted to date is ambiguous.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

EDDIE F. BROWN,
Assistant Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, DC, February 15, 1990.

Mr. FRAMON WEAVER,
P.O. Box 268, McIntosh, Alabama.

DEAR MR. WEAVER: The Branch of Acknowledgment and Research (BAR) has completed an initial review for obvious deficiencies and significant omissions of the Mowa Band of Choctaws' petition for Federal acknowledgment as an Indian tribe. This letter describes the obvious deficiencies and/or significant omissions that have been found in the Mowa petition.

The obvious deficiencies (OD) review is provided for in the Acknowledgment regulations to insure that a petitioner is not rejected because of technical problems in the petition and that the group's status will considered on its merits. The OD review does not purport to be a preliminary determination of any case. This OD letter does not constitute any evidence that a positive conclusion has been or will be reached on the petition, or on the portions of the petition not discussed in this letter. Nor does the fact that a petitioner responds to the OD review imply in any way that the group will meet the seven mandatory criteria by simply submitting additional data. The OD review of the petition merely provides the petitioner with an opportunity to submit additional information or clarification prior to the actual active consideration period. The OD review is a limited review conducted over a period of several weeks by a staff anthropologist, genealogist, and historian. Only during

active consideration is the petition reviewed and evaluated in-depth by the Acknowledgment staff to determine whether or not the group meets the requirements to be acknowledged as an Indian tribe.

With the requested information and or documentation, the Acknowledgment staff can more fully evaluate the petition when it is placed on active consideration. The staff's research during the active consideration period is for the purpose of verifying and/or elaborating on an already complete petition. The staff's caseload no longer permits them to do the research necessary to fill in gaps in the petition on behalf of the petitioner to the extent they have at times done in the past.

Petitioners have the option of responding in part or in full to the OD review or of requesting us to proceed with the petition using the materials already submitted. The decision as to whether the group chooses to address the deficiencies noted in the OD review should be made by the group and not solely by its researchers. If your group requests that the materials submitted in response to the OD review be reviewed as to the adequacy of the response, the Bureau of Indian Affairs will provide the additional assistance. This additional review will not be automatic and will be conducted only at the request of the petitioner.

The limits of these preliminary reviews must be taken into consideration. We do not know all of the questions that an in-depth evaluation during active consideration might raise.

Our comments and questions are organized below in the following order; (1) general comments and questions; (2) comments and questions regarding documentation/sources; and (3) comments and questions regarding the membership list, constitution, and council resolutions.

GENERAL COMMENTS AND QUESTIONS

Our review indicates that there are significant deficiencies in the petition. We recommend that the criteria be carefully reviewed and that the research be directed at providing the evidence that will demonstrate that your group meets each one. Your researchers should contact BAR to discuss the criteria in order that they can provide you with additional technical assistance.

The historical narrative portion of the petition focuses primarily on the genealogical connections of individual families and largely ignores the social and political history of the communities where the Mowa lived. It is important for you to provide a discussion and supporting documentation showing that the group has maintained distinct Indian communities from the period of first sustained contact to the present. Also, this discussion should detail how the Mowas have been recognized as an Indian community by outsiders since the time of sustained contact.

It might be helpful if you were to develop a brief chronology of Mowa history demonstrating the continuity of the group. After such a chronology is prepared, any major temporal gaps which are evident would provide you with a guide as to where you should concentrate your research to demonstrate the group's community and political continuity.

A detailed chronology of the various Mowa communities would also be helpful. Two of the "communities" have founding dates in the 1830's. A social and political history of these communities was not provided. The petition also mentions other communities that were formed later, from the 1890's to the 1920's, and implies that these are branches of the original two. Presumably, detailed histories of the two principal settlements would include information on the splitting off of the other, later, communities.

The narrative discussing criterion 83.7(b) defines 24 "settlements" where Mowa are concentrated and presents membership charts that indicate that these communities are tied together by marriage. The conclusions in this section of the narrative are confusing, since some of the designated settlements have only one Mowa member on the membership list.

William Harlan Gilbert describes two different groups of people, the Creoles and the Cajuns, in the area of Alabama where the Mowa are located. Your petition suggests that the group's current membership comes from both of these groups. A more extensive discussion of these two groups in your narrative might clarify their relationship and how each has become a part of your current group.

There are a number of questions concerning the significance of churches to the Mowa that were raised in our review of the petition. Churches have been built in various communities and the implication is that these have been community projects. Please describe these events in more detail, pointing out who the leaders of the projects were and how the leadership involved the Mowa Membership in those projects. One of the Methodist Church reports mentions "wakes" being very important in the area. Please describe the "wakes" of the past and the present and their importance in maintaining community identity. Authors of some of the church reports also noted that unique customs exist within the Mowa community, but no further descriptions of such customs are provided. Please provide more information about these unique customs. The petition also notes that other church-sponsored "special events" were attended by the whole Mowa group. Please elaborate on what these special events were and how the group participated in them.

There is also some limited discussion of past and present social interaction and economic interaction between members of the group. Please provide examples of such interacton and cooperation. It is important that you demonstrate that your membership constitutes a cohesive community. Descriptions of any communication systems or visiting patterns within and between families and any cultural or social events which bring the membership together are ways of demonstrating the community's cohesion.

The petition provides little specific information on the historic and current Mowa governing system. It is important that the group demonstrate continuity of tribal political authority from the past to the present and describe how leaders in the past influenced Mowa members. For example, discussions of dispute resolutions, the process of selecting leaders, how the members of the group bring issues before the tribal council would help to demonstrate the role of past leaders and their actions. A chronological list of leaders and a brief but documented description of each of their roles in Mowa history

would help to demonstrate political continuity from the time of first sustained contact to the present and assist us in understanding the group's leadership

COMMENTS AND QUESTIONS REGARDING DOCUMENTATION

There are references to significant unpublished materials which were not submitted with the petition. These included, among other things, unpublished disertations and theses. It is extremely important that copies of the relevant portions of all documentation used as supporting evidence be made available. You should copy and submit the relevant sections of any document which would not be readily available to BAR researchers. Without such documents, BAR might miss important and valuable information that would support your petition. Also, once a group is placed on active consideration it is important that BAR's time not be lost in the collection of cited documents, such as relevant newspaper articles, which are not readily available here in Washington.

There are also statements and conclusions in various sections of the petition that are either undocumented (i.e., there are no footnotes to indicate the source for the statement or basis for the conclusion), or for which sources are cited by not supplied with the petition. The BAR staff is willing to meet with your researchers to point out specific places in the petition where these situations exist.

COMMENTS AND QUESTIONS REGARDING THE MEMBERSHIP LIST, CONSTITUTION, AND COUNCIL RESOLUTIONS

If bylaws exist for the organization created by the 1979 Articles of Incorporation, please provide us with a copy.

If membership requirements have been formally adopted by the group, please submit a copy of the council minutes or resolution that adopted the requirements. Also, please provide a sample copy of the membership form used by the group. If a separate form is used for associate members, please submit a copy of this form.

You should continue to keep your membership list current by recording new births and deaths which take place in the interim before the petition is placed on active consideration. If your data base is IBM compatible, it will be easier for you to send us a copy of your data base at the time the pettion is palced on active consideration. Please let us know what software program is being used to create the membership data base. We would also appreciate if you could send us a copy of the data base structure showing what information is being put into the data base. We would be willing to discuss the membership data base with the person who is working on it.

We were told in the past that all of the genealogy was being placed on a computer software program. If this has been done, we would appreciate having a copy of this data base when your petition goes on active consideration. Please let us know what software program was used for the genealogy.

If your group chooses to respond to this OD review letter, we encourage you and your researchers to consult with BAR staff before preparing a response, so that you might utilize your research re-

sources more effectively. BAR can provide technical assistance, but cannot be resposible for actual research on the part of the petitioner. During active consideration, your petition will be thoroughly reviewed and evaluated to determine whether the group meets the requirements to be acknowledged as an Indian tribe. It may be necessary to request additional information during the course of active consideration. The BAR will make every effort to consult with you and your researchers regarding questions raised in this letter and those that might be raised during active consideration of your petition prior to the publication of a proposed finding.

We recommend that you contact Lynn McMillion, the Acknowledge staff member who has administrative responsibility for Alabama petitioners, so that we can make arrangements to provide additional technical assistance to you and your researchers. You may write her c/o Bureau of Indian Affairs, Branch of Acknowledgement and Research, Mail Stop 4627-MIB, 18th and C Streets, NW., Washington, DC 20240, or call her at (202) 343-3592.

Sincerely,

HAZEL E. ELBERT,

Deputy to the Assistant Secretary—Indian Affairs (Tribal Services).

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes no changes in existing law.

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